

(1995) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : Company Petition No. 8 of 1995

Poonamchand Kothari

APPELLANT

Vs

Rajasthan Tube Manufacturing Co. Ltd. and Others

RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Companies Act, 1956 — Section 10, 61, 63, 73(2B)

Citation : (1996) 87 CompCas 842

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : P.K. Khetan, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—This petition has been filed u/s 10 of the Companies Act, 1956, on the ground that the petitioner has moved an application for allotment of 12,000 shares of Rajasthan Tubes Manufacturing Company Ltd. A sum of Rs. 60,000 was paid along with the application submitted through the cheque. The said application was received by the State Bank of India. Beetal Finance and Computer Services Pvt. Ltd. were acting as Registrars to the issue. The application of the petitioner was considered for 1,200 shares instead of 12,000 shares and the cheque of Rs. 60,000 was encashed but it was considered by the respondent that only a sum of Rs. 6,000 had been paid.

2. A complaint was filed by the petitioner before the consumer forum. The consumer forum, vide its order dated July 1, 1995, held that in view of the decision given by the apex court in the case of Morgan Stanley Mutual Fund v. Kartick Das [1994] 81 Comp Cas 318, the petitioner does not fall within the category of consumer and as such the complaint is not maintainable.

3. Now, this petition u/s 10 of the Companies Act has been filed. Section 10 of the companies Act provides for the jurisdiction of the High Court and it is mentioned that the court having jurisdiction under this Act shall be--(a) the High

Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2). u/s 2(11), the court has been defined to mean (a) with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence.

4. It may be observed that under the Companies Act, the action could be taken by the company court, Company Law Board, Registrar of Companies, Central Government or the criminal court having jurisdiction. The Act and the Rules framed thereunder have provided different forums for redressal of the dispute. In the present case, the dispute is alleged of sections 61, 63, 73(2B).

5. For the alleged breach, this court has no jurisdiction. There may be certain disputes which could be resolved by the civil court only when a suit is filed. The jurisdiction u/s 10 of the Companies Act cannot be assumed unless it is shown by any provision of the Act or the Rules made thereunder that this court is having the jurisdiction. All the powers which are conferred on different authorities/courts, or which are not conferred upon this court cannot be tried u/s 10 of the Companies Act.

6. The provision of Rule 11 of the Companies (Court) Rules provides as under :

"11 (a) Petitions.--The following applications shall be made by petition-

- (1) Applications u/s 17 to confirm an alteration of the memorandum of association.
- (2) Applications u/s 79 to sanction issue of shares at a discount.
- (3) Applications u/s 101 to confirm reduction of share capital.
- (4) Applications u/s 107 to cancel any variation of the rights of holders of any class of shares.
- (5) Applications u/s 141 for rectification of the register of charges.
- (6) Applications u/s 155 for rectification of the register of members.
- (7) Applications u/s 186 by a director or member of a company for calling a meeting of the company.
- (8) Applications u/s 203 to restrain a fraudulent person from managing companies, or for leave by a person restrained to be a director of, or to manage, a company.
- (9) Applications u/s 237 for an order that the affairs of a company ought to be

investigated.

(10) Applications u/s 391(2) to sanction a compromise or arrangement.

(11) Applications u/s 395(1) or 395(2) for the purpose of preventing, or settling the terms, of the acquisition by a transferee-company of the shares of a dissenting shareholder.

(12) Applications u/s 397 for relief against oppression.

(13) Applications u/s 398 for relief in case of mismanagement.

(14) Applications u/s 407(l)(b) by a director, or manager, whose agreement is terminated for leave to act as the managing or other director, or manager of the company.

(15) Applications u/s 439 for winding up of a company, or u/s 583 for the winding up of an unregistered company, or u/s 584 for the winding up of a foreign company.

(16) Applications u/s 517 to set aside an arrangement between a company about to be or in the course of being wound up (voluntarily) and its creditors.

(17) Applications u/s 522 to continue a voluntary winding up subject to the supervision of the court.

(18) Applications for a declaration u/s 542 (XI Schedule) in the course of proceedings u/s 397 or 398 that a person who was knowingly a party to carrying on business in a fraudulent manner shall be personally liable for all or any of the debts or other liabilities of the company.

(19) Applications by a creditor or member u/s 543 (XI Schedule) in the course of proceedings u/s 397 or 398, to enquire into the conduct of any of the persons mentioned in Section 543 (XI Schedule) and compel him to repay or restore any money or property to the company or pay compensation.

(20) Applications u/s 559 for declaring the dissolution of a company void.

(21) Applications u/s 560(6) to restore a company's name to the Registrar of Companies.

(22) Applications u/s 579 to confirm the alteration in the form of the constitution of a company by substituting a memorandum and articles for a deed of settlement.

(23) Applications u/s 633(2) by an officer of a company for relief.

(b) Judge's summons.-All other applications under the Act or under these rules shall be made by a judge's summons, returnable to the judge sitting in court or in chambers as hereinafter provided."

6. This rule has provided various applications which could be made to this court.

There are other provisions of the Act under which the matter could be tried by this court only and appropriate directions could be issued.

7. The contention which has been raised in the present petition cannot be construed that this court is having the exclusive jurisdiction to act as a court of record by issuing writs of the nature as provided under Articles 226 and 227 of the Constitution of India. The power u/s 10 could be exercised by this court only in respect of the matters for which the jurisdiction is conferred by other provisions of the Act or the rules made thereunder. The High Court when acting as company court has special jurisdiction which is conferred by the provisions of the Companies Act or the Rules made thereunder and the power cannot be exercised as a general power or having plenary or residuary jurisdiction.

8. If there is any dispute between the subscriber and the company, the same could be tried in a civil court. Even if any provision is contravened by the company power has been given for prosecution of the company, but that has to be exercised by the court having jurisdiction and not this court. A prayer has been made that the Registrar of Companies should be directed to file a complaint against the company for prosecution on account of violation of the provisions of the Act. If the petitioner feels that he himself can file a complaint, he can do so else he can move to the Registrar when this court is not having the jurisdiction u/s 10, the order cannot be passed directing the Registrar of Companies to file a complaint against the company for prosecution. It may be observed that the provisions of Section 10 is defining the jurisdiction and not conferring the power. The power is conferred by the other provisions of the Act and the Rules made thereunder. The power which is exercised by this court is in respect of corporate rights and not individual rights when there is violation of the individual right of any citizen, he is having a remedy even by filing the civil suit or if there is a violation of the provisions of the Act, then for submitting a complaint thereof.

9. In the case of Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others, , it was observed by the Madhya Pradesh High Court as under (at page 290) :

"The plain effect of the above provisions is that the power and jurisdiction to deal with such matters as are covered by the Act itself has been given to the courts specified in Section 10(1) with respect to any matter relating to a company, other than an offence against the Act . . . The courts nominated under the Act have exclusive jurisdiction to take cognizance of the matters covered by the Companies Act. This follows from the well settled principles that where a particular court is specified or a special tribunal is created, by or under authority of an Act of Legislature, for the purpose of determining questions as to rights which are the creation of the Act, then the jurisdiction of that court or tribunal is, unless otherwise provided, exclusive."

10. But the other learned judge on the Division Bench was not prepared to go to that extent and said (at page 293) :

"As I read the definition of "the court" in Clause (a) of Section 2(11) of the Act (the one in Clause (b) not being material for this case), it merely enacts that, for determining the court competent to deal with any matter relating to a company (other than an offence against the Act), one must refer to Section 10 of the Act for ascertaining which court has jurisdiction under that Act with respect to that matter relating to that company. The reason for this is obvious from the provisions of Section

10. Where the jurisdiction in regard to the particular matter under consideration has been conferred on District Courts under Sub-section (2) of Section 10, the District Court within whose territorial jurisdiction the registered office of the company is situate will be the court having jurisdiction to deal with that matter. Again, as provided by Sub-section (3) of Section 10, the jurisdiction to wind up a company will be in that High Court or District Court, as the case may be, within whose territorial jurisdiction its registered office remained located for the longest period during the six months immediately preceding the presentation of the winding up petition. In my opinion, Section 10 of the Act merely specifies the courts which have jurisdiction to adjudicate upon the various matters required by the provisions of the Act to be dealt with by "the court".

11. On the above proposition, I need not repeat the decisions which have been given by the other High Courts as well as since this point is an undisputed one that the civil actions are cognizable by the civil court unless the said jurisdiction is expressly or impliedly barred. No provision has been brought to the notice of this court by which it could be inferred that the jurisdiction of the civil court to try the suit in respect of the present dispute is barred by any provision of the Companies Act.

12. In *Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*, it was observed that the exclusion of jurisdiction of the civil court in respect of a suit or an issue which is not only within its competence can be brought about only by clear and unambiguous language or necessary implication thereof. Therefore, the jurisdiction of the civil court is not to be considered as impliedly excluded.

13. The observation of the Privy Council in *Burland v. Earle* [1902] AC 83 that it is an elementary principle of the law relating to joint stock companies that the court will not interfere with the internal management of companies acting within their powers and in fact has no jurisdiction to do so, is also relevant in the present case. All civil actions are cognizable by a civil court u/s 9 of the Civil Procedure Code, 1908, unless the jurisdiction of the civil court is either expressly or by necessary implication barred.

14. The alleged breach of Section 61 has provided for civil liability u/s 62 and criminal liability u/s 63. Section 72(2) provides that notice in foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to confers any jurisdiction on this court (sic).

15. In *Morgan Stanley Mutual Fund v. Kartick Das* [1994] 81 Comp Cas 318 it was observed by the apex court that at the stage of application it is not good and after allotment different considerations may prevail. It is after allotment that rights may arise as per the contract (article of association of company) but not certainly before allotment. At that stage, he is only a prospective investor of future goods. There is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. There must be a transaction of buying goods for consideration under Clause 2(i) of the Act. Section 2(d) of the Consumer Protection Act, has defined consumer as a person who buys any goods for a consideration as also who hires any service for consideration. Taking this premise into consideration it was observed that "there is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of the above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under Clause 2(i) of the said Act. The definition contemplates the pre-existence of a completed transaction of sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act."

16. So far as the order passed by the consumer court is concerned, it may be observed that the remedy of appeal is provided for against any order passed under that Act.

17. In view of the above position of law, I feel that this court does not have the jurisdiction u/s 10 of the Companies Act and the petition is accordingly dismissed.